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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMANDO GUIZAR,

Defendant and Appellant.

H042370

(Santa Clara County

Super. Ct. Nos. F1450335, C1367023,
C1371225 & F1450336)

STATEMENT OF THE CASE

On January 29, 2015, defendant Armando Guizar entered no contest pleas in four separate cases. In superior court case number F1450335, defendant pleaded no contest to attempted first degree burglary (Pen. Code, §§ 664, 459, and 460, subd. (a)). In superior court case number F1450336, defendant pleaded no contest to transportation or sale of methamphetamine (Health & Saf. Code, § 11379) and possession of marijuana (Health & Saf. Code, § 11357, subd. (c)). In superior court case number C1367023, defendant pleaded no contest to grand theft from the person of another (Pen. Code, § 487, subd. (c)), being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a)), and fleeing a pursuing police officer's vehicle (Veh. Code, § 2800.1). In superior court case number C1371225, defendant pleaded no contest to failure to register as a sex offender (Pen. Code, § 290.015). In all four cases, defendant admitted a prior conviction for forcible sodomy (Pen. Code, § 286, subd. (c)(2)).

On April 27, 2015, the trial court sentenced defendant to a total prison term of 11 years 8 months. The trial court imposed various fines and fees. In particular, for superior court case number F1450335, the trial court imposed a \$10 crime prevention programs fine pursuant to Penal Code section 1202.5 and an attendant \$31 penalty assessment. In superior court case number F1450336, the trial court imposed a \$100 criminal laboratory analysis fee pursuant to Health and Safety Code section 11372.5 with an accompanying \$310 penalty assessment, and it also imposed a \$300 drug program fee pursuant to Health and Safety Code section 11372.7 plus an attendant \$930 penalty assessment. In superior court case number C1367023, the trial court imposed a \$50 criminal laboratory analysis fee pursuant to Health and Safety Code section 11372.5 and an accompanying \$155 penalty assessment.

Defendant now appeals from the judgments of conviction. On appeal, he makes the following arguments: 1) the crime prevention programs fine and attendant penalty assessment must be stricken; 2) the penalty assessments accompanying the criminal laboratory analysis fees must be stricken; and 3) the penalty assessment accompanying the drug program fee must be stricken. As set forth below, we strike the crime prevention programs fine and attendant penalty assessment, and we affirm in all other respects.

DISCUSSION¹

I. Crime Prevention Programs Fine and Attendant Penalty Assessment

Defendant contends that we must strike the crime prevention programs fine and attendant penalty assessment imposed in superior court case number F1450335 because Penal Code section 1202.5 “is inapplicable to [his] offense of conviction.” The Attorney General concedes that we must strike the crime prevention programs fine and accompanying penalty assessment.

¹ The facts underlying defendant’s convictions are not pertinent to our disposition of the issues presented on appeal. We therefore do not summarize those facts.

Penal Code section 1202.5 prescribes a fine that supports “local crime prevention programs.” (Pen. Code, § 1202.5, subd. (b)(1).) As pertinent here, Penal Code section 1202.5 states: “In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 470, 484, 487, subdivision (a) of Section 487a, or Section 488, or 594, the court shall order the defendant to pay a fine of ten dollars (\$10) in addition to any other penalty or fine imposed.” (Pen. Code, § 1202.5, subd. (a).) The \$10 fine prescribed by Penal Code section 1202.5 “does not apply to an attempted crime.” (*People v. Jefferson* (2016) 248 Cal.App.4th 660, 663.)

Given that defendant was convicted of attempted burglary in superior court case number F1450335, the trial court had no authority to impose the crime prevention programs fine in that case. We therefore strike that \$10 fine and the attendant \$31 penalty assessment.

II. Penalty Assessments on the Criminal Laboratory Analysis Fees and Drug Program Fee

Defendant challenges the imposition of penalty assessments on the criminal laboratory analysis fees imposed under Health and Safety Code section 11372.5 and the drug program fee imposed under Health and Safety Code section 11372.7. He contends that the trial court erred in imposing those penalty assessments, and he urges us to strike them.

Penal Code section 1464 and Government Code section 76000 mandate penalty assessments for “every fine, penalty, or forfeiture” imposed by the trial court in a criminal case. (Pen. Code, § 1464, subd. (a)(1); Gov. Code, § 76000, subd. (a)(1).) The issue here is whether the criminal laboratory analysis fees and drug program fee are fines, penalties, or forfeitures subject to penalty assessments.

Health and Safety Code section 11372.5, subdivision (a) provides: “Every person who is convicted of [these enumerated offenses] shall pay a criminal laboratory analysis

fee in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment. [¶] With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars (\$50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law.”

Cases have consistently held that the criminal laboratory analysis fee is a fine subject to penalty assessments. (*People v. Sharret* (2011) 191 Cal.App.4th 859, 863-864; *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1251-1254; *People v. Taylor* (2004) 118 Cal.App.4th 454, 456; *People v. Turner* (2002) 96 Cal.App.4th 1409, 1416, fn. 5; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1257; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1522; see also *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 [the criminal laboratory analysis fee is a fine].) Indeed, *People v. Turner*, *supra*, 96 Cal.App.4th 1409 described the issue as “settled.” (*Id.* at pp. 1414, fn. 3, 1416, fn. 5.) Given this long line of authority, we must conclude that the trial court properly imposed penalty assessments upon defendant’s criminal laboratory analysis fees.

Health and Safety Code section 11372.7, subdivision (a) states: “[E]ach person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars (\$150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.”

The drug program fee “is a fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply.” (*People v. Sierra* (1995) 37 Cal.App.4th 1690, 1696; see also *People v. Corrales* (2013) 213 Cal.App.4th 696, 702 [drug program fee is subject to penalty assessments]; *People v.*

Sharret, *supra*, 191 Cal.App.4th 859, 864 [same].) The trial court therefore properly imposed penalty assessments upon defendant's drug program fee.

Defendant contends that the recent decision in *People v. Watts*, *supra*, 2 Cal.App.5th 223, compels this court to strike the penalty assessments imposed on his criminal laboratory analysis fees and drug program fee. *Watts* held that a criminal laboratory analysis fee imposed under Health and Safety Code section 11372.5 "is not subject to penalty assessments." (*Id.* at p. 226.)

We do not believe that *Watts* requires us to strike the penalty assessments imposed upon defendant's criminal laboratory analysis fees. *Watts* itself noted that its holding was "contrary to the weight of authority." (*Watts*, *supra*, 2 Cal.App.5th at p. 226.) Moreover, *Watts* conflicts with our Supreme Court's decision in *People v. Talibdeen* (2002) 27 Cal.4th 1151 (*Talibdeen*). In *Talibdeen*, "the trial court imposed . . . a laboratory analysis fee of \$50 pursuant to Health and Safety Code section 11372.5, subdivision (a). Although subdivision (a) of Penal Code section 1464 and subdivision (a) of Government Code section 76000 called for the imposition of state and county penalties based on such a fee, the trial court did not levy these penalties [T]he Court of Appeal imposed the penalties because they were mandatory—and not discretionary—sentencing choices." (*Id.* at p. 1153, fns. omitted.) The Supreme Court affirmed the decision of the Court of Appeal, explaining that the trial court "had no choice and had to impose" penalties upon the criminal laboratory analysis fee. (*Id.* at p. 1157.) *Watts* runs afoul of the Supreme Court's conclusion that penalties must be imposed upon a criminal laboratory analysis fee. We therefore decline to follow *Watts*, and in accordance with *Talibdeen* we affirm the imposition of penalty assessments upon defendant's criminal laboratory analysis fees.

Nor does *Watts* require us to strike the penalty assessments imposed upon defendant's drug program fee. *Watts* did not address the issue of whether penalty assessments must be added to a drug program fee imposed pursuant to Health and Safety

Code section 11372.7. Given that *Watts* did not address the issue, we follow the line of authority requiring imposition of penalty assessments upon a drug program fee.

In sum, defendant has failed to show that the penalty assessments imposed on his criminal laboratory analysis fees and drug program fee must be stricken. We will not strike those penalty assessments.

DISPOSITION

The \$10 crime prevention programs fine (Pen. Code, § 1202.5) and attendant \$31 penalty assessment imposed in superior court case number F1450335 are stricken. In all other respects, the judgments are affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

GROVER, J.